



**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**45 CFR Part 3**

**[Docket Number – NIH-2020-0002]**

**RIN: 0925-AA67**

Conduct of Persons and Traffic on the National Institutes of Health Federal Enclave

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Department of Health and Human Services (HHS or Department), through the National Institutes of Health (NIH), proposes to amend the existing regulation for the conduct of persons and traffic on the NIH enclave in Bethesda, Maryland, in order to update certain provisions of the regulation.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**ADDRESSES:** You may send comments, identified by Docket Number NIH-2020-0002 and/or RIN 0925-AA67 by any of the following methods:

Electronic Submissions:

You may send comments electronically in the following way:

- Federal rulemaking Portal: [www.regulations.gov](https://www.regulations.gov). Follow the instructions for sending comments.

Written Submissions:

You may send written comments in the following ways:

Please allow sufficient time for mailed comments to be received before the close of the comment period.

- Mail (for paper or CD-ROM submissions): Daniel Hernandez, NIH Regulations Officer, National Institutes of Health, Office of Management Assessment, Rockledge 1, 6701 Rockledge Drive, Suite 601, Room 601-T, MSC 7901, Bethesda, Maryland 20817-7901.
- Hand delivery/courier (for paper or CD-ROM submissions): Daniel Hernandez, NIH Regulations Officer, National Institutes of Health, Office of Management Assessment, Rockledge 1, 6705 Rockledge Drive, Suite 601, Room 601-T, Room 601-T, MSC 7901, Bethesda, Maryland 20892-7901.

Instructions: All submissions received must include the agency name and docket number or Regulatory Identifier Number (RIN) for this Rulemaking. All comments will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

Docket:

For access to the docket to read background documents or comments received, go to the eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) and insert the docket number provided in brackets in the heading on page one of this document into the “search” box and follow the prompts.

**FOR FURTHER INFORMATION CONTACT:** Daniel Hernandez, NIH Regulations Officer, Office of Management Assessment, NIH, Rockledge 1, 6705 Rockledge Drive, Suite 601, Room 601-T, Bethesda, MD 20817 – MSC 7901, by email at [dhernandez@mail.nih.gov](mailto:dhernandez@mail.nih.gov), or by telephone at 301- 435-3343 (not a toll-free number).

## **SUPPLEMENTARY INFORMATION:**

### **1. Background**

On November 16, 2020, the Department of Health and Human Services (HHS or Department) issued a direct final rule (85 FR 72899-72912) amending certain regulations, as part of its Regulatory Clean Up Initiative, to make miscellaneous corrections, including correcting references to other regulations, misspellings and other typographical errors. These corrections included changes to the regulation codified at 45 CFR Part 3 concerning the conduct of persons and traffic on the National Institutes of Health Federal Enclave. With this notice of proposed

rulemaking (NPRM), the Department proposes to make several additional changes to 45 CFR Part 3 that are necessary to further update the regulation. These additional changes were determined to be necessary following the review of the regulation conducted by NIH in 2019.

## **2. Summary of Proposed Changes**

With this NPRM, we propose to make several changes to the regulation at 45 CFR Part 3 concerning the conduct of persons and traffic on the National Institutes of Health Federal Enclave that are necessary to ensure the regulation is up-to-date.

Specifically, in Subpart A of the regulation, we propose to amend section 3.4 by removing the last sentence that specifies the Police Office's main location and telephone number. The NIH Police Department may be relocated in the future under the current campus master plan. Removing the sentence will eliminate the need in the future to amend the regulation any time the NIH Police Department is relocated.

In Subpart C of the regulation, we propose to amend section 3.42 by revising the last sentence of paragraph (b) to update several terms. The existing last sentence states that the use of a dog by a handicapped person to assist that person is authorized. NIH proposes to update this sentence by replacing the term "dog" with the term "service animal". NIH also proposes to update this sentence by removing the term "handicapped person" and replacing it with the term "a person with a disability" to reflect current and accepted use of the term. The proposed revised sentence is "The use of a service animal by a person with a disability to assist that person is authorized."

Additionally, in Subpart C, we propose to amend section 3.42 by revising paragraph (f) to state that except as part of an approved medical research protocol a person may not smoke on the enclave. The existing language does not prohibit smoking outside of buildings on the enclave. As a tobacco-free campus, NIH does not allow smoking inside or outside buildings. The proposed change makes this clear in the regulation.

In Subpart D, we propose to amend section 3.61 by revising paragraph (a) to state that a person found guilty of violating any provision of the regulations in this part is subject to a fine or

imprisonment of not more than thirty days or both, for each violation (U.S. Public Law 107-296, Homeland Security Act of 2002). The existing language states that a person found guilty of violating any provision of the regulation is subject to a fine of not more than \$50 or imprisonment, or both for each violation. The dollar amount of fines can increase at any time. In fact, the current fine amount is more than \$50. Not stating a specific dollar amount for the fine in paragraph (a) will eliminate any future need to amend the regulation when incremental increases in the fine amount occur. Information about fines is publicly available.

The purpose of this NPRM is to invite comment concerning these proposed actions. We provide the following as public information,

### **Regulatory Impact Analysis**

We have examined the impacts of this proposed rule under Executive Order (E.O.) 12866, Regulatory Planning and Review; E.O. 13563, Improving Regulation and Regulatory Review; and E.O. 13132, Federalism; the Regulatory Flexibility Act (5 U.S.C. 601-612); and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

### **Executive Orders 12866 and 13563**

E.O. 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct Federal agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity) for all significant regulatory actions. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). Based on our analysis, we believe the proposed rulemaking does not constitute a significant or economically significant regulatory action.

### **Executive Order 13132**

Executive Order 13132, Federalism, requires Federal agencies to consult with State and local government officials in the development of regulatory policies and with federalism implications.

We have reviewed the proposed rule as required under the Order and have determined that it will not have a significant potential negative impact on States, in the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government does not have any federalism implications. The Secretary asserts that this proposed rule will not have effect on the States or on the distribution of power and responsibilities among the various levels of government.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires Federal agencies to analyze regulatory options that would minimize any significant impact of the rule on small entities. For the purpose of this analysis, small entities include small business concerns as defined by the Small Business Administration (SBA), usually businesses with fewer than 500 employees. The Secretary asserts that the proposed rule will not create a significant economic impact on a substantial number of small entities, and therefore a regulatory flexibility analysis, is not required.

### **Unfunded Mandates Act of 1995**

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires Federal agencies to prepare a written statement which includes an assessment of anticipated costs and benefits before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal organizations, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation with base year of 1995) in any one year.” The current inflation-adjusted statutory threshold is approximately \$156 million based on the Bureau of Labor Statistics inflation calculator. This rule will not result in a one-year expenditure that would meet or exceed that amount.

### **Paperwork Reduction Act**

This proposed rule does not contain any information collection requirements which are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

### **List of Subjects in 45 CFR Part 3**

Conduct, Federal buildings and facilities, Government property, Traffic regulations, Firearms.

For reasons presented in the preamble, it is proposed to amend title 45 of the Code of Federal Regulations by revising Part 3, as set forth below.

## **PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSITUATES OF HEALTH FEDERAL ENCLAVE**

1. The authority citation for part 3 continues to read as follows:

**Authority:** [40 U.S.C. 318-318d](#). 486; Delegation of Authority, [33 FR 604](#).

### **§ 3.4 [Amended]**

2. Amend § 3.4 by removing the last sentence of the paragraph.
3. Amend § 3.42 by revising the last sentence in paragraph (b) and paragraph (f) to read as follows:

### **§ 3.42 Restricted activities.**

\* \* \* \*

(b) \*\*\*The use of a service animal by a person with a disability to assist that person is authorized.

\* \* \* \*

(f) *Smoking.* Except as part of an approved medical research protocol, a person may not smoke on the enclave.

\*\*\*\*\*

4. Amend § 3.61 by revising paragraph (a) to read as follows:

**§3.61 Penalties.**

(a) A person found guilty of violating any provision of the regulations in this part is subject to a fine or imprisonment of not more than thirty days or both, for each violation (U.S. Public Law 107-296, Homeland Security Act of 2002).

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Xavier Becerra,

Secretary,

Department of Health and Human Services.

[FR Doc. 2022-02859 Filed: 2/25/2022 8:45 am; Publication Date: 2/28/2022]